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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/870,311	05/30/2001	David Blight	035451-0131 (3640.Palm)	7636

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FOLEY & LARDNER LLP
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MILWAUKEE, WI 53202-5306

EXAMINER

PHU, SANH D

ART UNIT	PAPER NUMBER
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2618

MAIL DATE	DELIVERY MODE
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03/21/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/870,311

Applicant(s)

BLIGHT ET AL.

Examiner

Sanh D. Phu

Art Unit

2618

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 February 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-26.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☒ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Attachment.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☒ Other: See Attachment.

SANH D. PHU
PATENT EXAMINER

3/14/07



ATTACHMENT

This Attachment is responsive to the Applicant's Response, Supplemental Declaration Under 37 C.F.R. 1.131 declared by Elaine Lusher, Supplemental Declaration Under 37 C.F.R. 1.131 declared by David Blight and Affidavit of Alistair Chan, filed on 2/28/07.

1. The Supplemental Declaration Under 37 C.F.R. 1.131 declared by Elaine Lusher, Supplemental Declaration Under 37 C.F.R. 1.131 declared by David Blight and Affidavit of Alistair Chan, filed on 2/28/07, have been entered and considered. However, they are deemed ineffective to overcome Hamaguchi et al because of the following reasons:

-The declarant(s) did not provide evidence or proof of reduction to practice of the invention in this country or a NAFTA or WTO member country before the effective date of Hamaguchi et al. (Note that the declarant(s), so far, have not yet responded to this matter),

- The declarant(s) did not provide evidence or proof of reduction to practice of the invention in this country or a NAFTA or WTO member country after the effective date of Hamaguchi et al. (Note that in response, in REMARKS of Applicant's Response, the declarant(s) replied that the applicants are relying on their May 30, 2001 filing date as a constructive reduction to practice. However, nowhere is found in the Supplemental Declaration Under 37 C.F.R. 1.131 declared by Elaine Lusher, Supplemental Declaration Under 37 C.F.R. 1.131 declared by David Blight and/or Affidavit of Alistair Chan any statement or indication that the applicants are relying on their May 30, 2001 filing date as a constructive reduction to practice; and so far the declarant(s) have not yet provided evidence or proof of reduction to practice of the invention in this country or a NAFTA or WTO member country after the effective date of Hamaguchi et al).

2. With Respect to the Applicant's Response filed on 2/28/07, the applicant mainly argues that the last Office Action issued on 12/15/06 should not be made final because the Office Action is responsive to the RCE in association with an Declaration Under 37 C.F.R. 1.131, filed on 10/19/06, and the Applicant had not have a chance to respond to the Examiner's Objections to the Declaration.

The examiner respectfully disagrees. It is deemed that the last Office Action issued on 12/15/06 was properly made final because in accordance with M.P.E.P. 706.07(b), the following conditions are met: (A) The Office Action is a first Office Action following an RCE; (B) all claims are drawn to the same invention claimed earlierly and would have been properly finally rejected on the grounds and art of record in the next Office action if they have been entered in the Applicant's earlier response (since the previous rejection set forth in the non-final Office Action issued on 11/30/05, were maintained) . It is important to note hereby that the finality of the Office Action was necessary in order to no longer give the applicant the right to amend the claims for changing the scope of the previously claimed invention since the previous rejection set forth in the non-final Office Action issued on 11/30/05, were maintained. Further, based on the Office Action issued on 12/15/06, the Declaration Under 37 C.F.R. 1.131, filed on 10/19/06, was entered, but, it was deemed ineffective to overcome Hamagguchi et al. However, the applicant was given a chance to respond to the examiner on this matter since the Applicant's Response, Supplemental Declaration Under 37 C.F.R. 1.131 declared by Elaine Lusher, Supplemental Declaration Under 37 C.F.R. 1.131 declared by David Blight and Affidavit of Alistair Chan, filed on 2/28/07, had been entered and considered, and corresponding actions has been established as shown in this Office Action.